

REMARKS

Claims 17-32 are pending in this application, with claim 17 being the sole independent claim. Claim 17 has been amended to include the feature that the snug fit surface includes at least one rigid portion which can cause the irritation to the skin. Basis for this amendment can be found in the specification on page 1, lines 6-7 which state that irritation can occur “when hard-shell footwear is used” and on page 3, lines 1-5 which state that the support members of the invention are arranged substantially on either side of the front sides of the body and are useful in “preventing the irritation caused by the bone in combination with the hard shell of footwear”.

No new matter has been added.

Response to Rejection

Claims 17-32 have been rejected under 35 U.S.C. §103(a) as being obvious over U.S. Patent No. 4,756,026 to Pierce, Jr. (hereinafter referred to as “Pierce”).

Pierce discloses a protective device that can be worn about the leg wherein the device includes an under and upper side being made of an elastic sleeve that has a recess for placing on the front side of the leg. The protective body wholly encloses the leg with the underside defining a recess through which the foot is inserted. Pierce fails to teach that the protective device can be used to prevent irritation to the skin and that this device is located adjacent to an irritable surface of the skin and is capable of fitting between a leg and a snug fit surface.

The Office Action asserts that it would have been obvious to one skilled in the art that the foam support members of the device can prevent irritation to the skin when the device is worn depending on the end use thereof.

Applicant respectfully traverses this rejection for the following reasons.

Pierce fails to teach the claimed feature of inserting the device between a snug fit member and a user’s skin. Accordingly, since this claimed feature is not taught, irritation from the hard surface of the snug fit member, i.e., ski boot, would not occur. Pierce is directed to a limb protector for protection from damaging blows during the play of contact sports. Note especially col. 1, lines 5-7, col. 2, lines 40-45. Pierce is not concerned with providing a device for placement between a snug fit member and a user’s skin to prevent irritation to the skin surface. Pierce even teaches at col. 2, line 50 and at col. 4, lines 53-54 that rigid panels or impact strips may be included to provide impact protection to the limb.

As noted in the present application, these rigid panels often cause irritation of the skin. For example, when a user wears ski boots, the stiff member is located in the boots to provide protection from impacts and support to the ankle. For this reason, the device of the invention has been developed to protect the wearer's skin from irritation by these stiff protective members. Accordingly, one having ordinary skill in the art at the time of the invention would not be motivated to incorporate the device of Pierce including the rigid members between a user's leg and a snug fit surface (such as a ski boot) to protect against irritation as it is this rigid protective member that actually causes the irritation. Furthermore, should one be motivated to incorporate this rigid protective member in between a leg and a snug fit surface (ski boot), the user's skin would become severely damaged by continuous leaning on the top part of the ski boot while the shin is leaning forward against this incorporated stiff member.

It is clear from Pierce that the limb protector is to be used for protecting the limb from blows associated with contact sports and *not* for insertion between a snug fit surface and a user's skin to prevent irritation of the skin surface. It is noted that Pierce appears to teach an embodiment at col. 2, line 51 comprised only of foam members i.e., without a rigid member. However, one having ordinary skill in the art would recognize that in order for the device to provide sufficient protection from the blows associated with contact sports, the foam layers of Pierce would have to have a certain thickness, which will likely be too bulky to fit between a user's skin and a snug fit surface such as a ski boot. Accordingly, one having ordinary skill in the art would not be motivated to insert the limb protector taught by Pierce between a snug fit surface and a user's skin.

Furthermore, it would appear that the Office Action is relying upon hindsight knowledge of the present invention to apply Pierce in the obviousness rejection. Absent this hindsight knowledge, one having ordinary skill in the art would not be motivated to use a limb protecting device which can include rigid portions and/or foam having a particular thickness to sufficiently protect the user during contact sports, such as football, wrestling, karate, soccer, hockey, basketball, volleyball, and the like and to then insert this device between a snug fit surface, such as a ski boot, and the user's skin to prevent irritation of the skin from the snug fit surface.

Application No. 10/527,243
Paper Dated: September 16, 2009
In Reply to USPTO Correspondence of March 16, 2009
Attorney Docket No. 4828-050784

Independent claim 17 has been further amended to clarify that the "snug fit surface" is one including a rigid portion which can cause irritation to a skin surface. This added feature is not contemplated nor rendered obvious by Pierce in view of the teachings of Pierce that a rigid portion can be incorporated in the limb protector itself.

With respect to claims 20, 21 and 32, Pierce fails to teach the specific features set forth in these claims such as providing at least one support member for supporting a part of the leg adjacent to the member after placing around a leg (claim 20); two support members on the inner side of the body which are arranged substantially on either side of the front side of the body (claim 21); and markings for removing at least a part of the body there along (claim 32).

It is respectfully requested that the rejection of claims 17-32 under 35 U.S.C. § 103(a) be withdrawn as Pierce fails to render these claims obvious.

CONCLUSION

Based on the foregoing amendments and remarks, reconsideration of the rejection and allowance of pending claims 17-32 are respectfully requested.

Respectfully submitted,

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